INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	2
Statement	3
Argument	7
Conclusion	14
Appendix	15

CITATIONS

Cases:

Atwater & Co. v. *United States*, 275 U. S. 188	10
Gibson v. *United States*, 166 U. S. 269	10
Hamilton v. *Kentucky Distilleries Co.*, 251 U. S. 146	10
Henderson v. *Bryan*, 46 F. Supp. 682	11
Omnia Co. v. *United States*, 261 U. S. 502	10
St. Regis Paper Co. v. *United States*, 76 F. Supp. 831, certiorari denied October 11, 1948	10
Transportation Co. v. *Chicago*, 99 U. S. 635	10
United States v. *Felin & Co.*, 334 U. S. 624	14
United States v. *General Motors Corp.*, 323 U. S. 373	10
United States v. *New River Collieries*, 262 U. S. 341	14
Walker et al. v. *United States*, 64 F. Supp. 135, 105 Ct. Cls. 553	8

Statutes:

Act of June 28, 1940 (54 Stat. 676) as amended by Act of May 31, 1941 (55 Stat. 236)	2, 3, 10, 15
Act of October 16, 1941 (55 Stat. 742)	6
Emergency Price Control Act of January 30, 1942, 56 Stat. 23, 50 U.S.C. App. 901	7

Miscellaneous:

Executive Order 8832, 3 C.F.R., 1941 Supp., 246	3
General Preference Order M-22, 6 F.R. 3731	2, 3, 9, 16
Amendment, 6 F.R. 3892	2, 4, 18
Amendment, 6 F.R. 4046	2, 4 19
Amendment, 6 F.R. 5290	2, 4, 19

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 490

EDWARD P. STAHEL & CO., INC. ET AL., PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the Court of Claims (R. 97-109) are reported at 78 F. Supp. 800-807.

JURISDICTION

The judgment of the Court of Claims was entered on June 28, 1948 (R. 109). A motion for a new trial was overruled on October 4, 1948 (R. 110). The petition for a writ of certiorari was filed on December 31, 1948. The jurisdiction of this Court presumably is invoked under 28 U.S.C. 1255.

QUESTIONS PRESENTED

1. Whether, assuming that there was a taking of petitioners' raw silk within the meaning of the Fifth Amendment,[1] the Court of Claims erred in finding that the taking occurred on October 16, 1941, when the Office of Production Management issued amended Order M-22 which, on the basis of the A-10 priority therein given, required acceptance of contracts or orders for raw silk placed by Defense Supplies Corporation, rather than on July 26, 1941, when the same office issued its original Order M-22 prohibiting the delivery of raw silk.

2. Whether upon all the evidence the Court of Claims properly fixed just compensation for the silk at $3.08 a pound rather than at $3.57 a pound, the closing price on July 25, 1941, the last day of trading on the market.

STATUTES AND REGULATIONS INVOLVED

The provisions of the Act of May 31, 1941 (55 Stat. 236) which amended the Act of June 28, 1940 (54 Stat. 676); of General Preference Order M-22 issued by the Office of Production Management 6 Fed. Reg. 3731; and of the amendments thereto 6 Fed. Reg. 3892, 4046, 5290 are set forth in the Appendix, *infra*.

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[1] The Government believes that the Court of Claims erred in holding that there was a "taking" of petitioners' raw silk. That question is being raised in a conditional cross-petition which the Government is filing.

STATEMENT

Petitioners, on August 14, 1945, brought suit against the United States in the Court of Claims seeking to recover just compensation for the alleged taking of their raw silk. The facts as found by the court below may be summarized as follows:

From July 21, 1941 to July 25, 1941, the market price of raw silk was rising rapidly from $3.04 a pound to $3.65 a pound (R. 48). During the preceding eleven years the average monthly price exceeded $3.08 in only four months and was less than $2.00 a pound in 67 months. Of the silk here involved, less than 4% was acquired by the petitioners at the prices prevailing from July 21 to July 25, 1941 (R. 49). Each of the petitioners owned a quantity of raw silk at this time. On July 26, 1941, the President of the United States, having announced his intention of so doing on the preceding afternoon at a press conference, "froze" all Japanese assets in this country by virtue of Executive Order 8832, 3 C.F.R., 1941 Supp., 246 (R. 50). This order terminated all commercial transactions in raw silk with Japanese nationals and thus cut off the source of supply for practically all of the raw silk used in this country (R. 50).

On this same day, the Office of Production Management, acting pursuant to the Act of June 28, 1940 as amended by the Act of May 31, 1941 (Appendix, *infra*, p. 15), issued General Preference Order M-22, which prohibited the delivery or

acceptance of raw silk without the specific authorization of the Director of Priorities. Also on July 26, 1941, the Commodity Exchange, the only market in New York for the purchase and sale of futures contracts in raw silk, suspended such trading in silk at the request of the Administrator of the Office of Price Administration and Civilian Supply, who announced on this same day that his office would within a few days impose a price ceiling on raw silk at approximately the level that had prevailed in the markets on July 21, 1941 (R. 52).

On August 2, 1941, by virtue of Price Schedule No. 14, a price ceiling of $3.08 a pound was set (R. 53-56), and on the same day the Office of Production Management amended General Preference Order M-22 so as to forbid all processing of raw silk unless specifically authorized by the Director of Priorities. On August 12, 1941, this same preference order was amended so as to permit deliveries of raw silk to Defense Supplies Corporation or pursuant to its instructions. Again, on October 16, 1941, the Office of Production Management amended the order (M-22). The pertinent part of that amendment was as follows:

> 963.1 General Preference Order No. M-22 —(a) *Applicability of Priorities Regulation No. 1.*—All of the provisions and definitions of Priorities Regulation No. 1, issued by the Director of Priorities on August 27, 1941, shall be deemed a part of this Order, except in so far as they are inconsistent herewith.

(b) *Required and permitted deliveries.*

(1) The following orders are hereby assigned a preference rating of A-10, and acceptance thereof is required:

(i) Any contract or order for silk cloth, shroud lines, tape or thread for either life, material, or flare parachutes placed by the War Department, the Navy Department, or the Department of Commerce for such parachutes to be delivered to or for the account of the Army, Navy or Weather Bureau of the United States.

(ii) Any contract or order for silk in any form required by the person placing the same to fulfill his contracts or orders on hand, provided such silk is to be physically incorporated in material to be delivered under contracts or orders included under (i) above.

(iii) Any contract or order for raw silk placed by the Defense Supplies Corporation.

* * * * *

By further amendment to M-22 on October 28, 1941, each owner of raw silk was required to make a written report of his raw silk on hand to the Office of Production Management (R. 60).

On September 1, 1941, Defense Supplies Corporation sent to various raw silk holders a form of purchase contract known as "D.S.C. Silk No. 1" with a letter offering to purchase silk at the ceiling price but containing no mention of priority orders (R. 62-65). A new form of contract "D.S.C. Silk

No. 3" was adopted about December 22nd and sent on December 23rd to all known holders of raw silk. This latter form contained a specific reference to Amended Order M-22 of October 16, 1941, and "required" acceptance under the A-10 priority there given (R. 65-68). All the petitioners here accepted orders in December, 1941 or January, 1942, two of them, Edward P. Stahel & Co., Inc., and Oscar Heineman Corporation on the "D.S.C. Silk No. 1" form and the remaining seven on the "D.S.C. Silk No. 3" form (R. 80-94, 101). Petitioners were paid for the silk here involved at $3.08 a pound, the ceiling price for standard grade silk (R. 80-94, 101). On February 10, 1942, the War Production Board under the Act of October 16, 1941 (55 Stat. 742), requisitioned 17,177 bales representing all silk not then belonging to Defense Supplies Corporation, except for 600 bales requisitioned later on March 17, 1942 (R. 69).

The Court of Claims found that petitioners' silk had been taken by the Government on October 16, 1941, the day upon which the Office of Production Management amended its Order M-22 (R. 102). The reasons given were that the order prohibited the owner from making any other use of his silk and at the same time required him to sell it, on request, to the Government. A majority of three judges of that court, after an examination of the materials they had at hand, concluded that $3.08 a pound was "just compensation". (R. 104-105). In arriving at this conclusion, the court said that

there being no market at the time of taking, it had considered the nature of events which caused the extraordinary rise in the price of silk in the few days preceding the closing of the market,[2] the normal prices of silk previously prevailing as shown by tables set out in the findings, and the cost of the silk to the owners (R. 105). Two judges dissented on the ground that $3.57 a pound was "just compensation" because it was the closing price on July 25, 1941, the last day of trading on the market (R. 106).

ARGUMENT

1. Petitioners stress primarily the alleged impropriety of basing an award of just compensation on a ceiling price fixed by the Office of Price Administration and Civilian Supply prior to the enactment of the Emergency Price Control Act of January 30, 1942, 56 Stat. 177, 50 U.S.C. App. 633. But that question, we submit, is not presented by this case. It is clear from the findings and from the opinion that the Court of Claims did not arrive at $3.08 a pound as "just compensation" by using the ceiling price as its basis, but rather arrived at such a figure after an independent judicial determination. The Court of Claims, having noted that petitioners challenged the authority of the Office of Price Administration and Civilian Supply

[2] The market closed on July 26, 1941. The court stated that the prices prevailing from July 21 to July 25 were those of an extraordinary fluctuation and were no measure of the fair value of the silk as of the later time that the silk was taken (R. 105).

to set the ceiling price of $3.08 a pound, goes on to state that it was unnecessary to decide this question, "because we think that the price of $3.08 per pound represented a fair price and just compensation for the silk taken." 78 F. Supp. 800, 805. The court then mentioned its consideration of the prices of silk from 1930 to 1941 and of the "extraordinary fluctuation" of July 21 to July 25, 1941, which it stated was no measure of the fair value of the silk as of October 16, when it was "taken." There then appears, first, the clear expression by the court of an intention to make its own judicial determination followed by the explained determination.[3] Had the court intended to rely on the ceiling price as the basis of just compensation it would not have by-passed the question of whether there was authority to set it, it would not have undertaken to make and to explain a determination

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[3] "* * * There being no market, in the usual sense, for silk at the time of taking, the court must make its decision as to just compensation out of such materials as are at hand. Considering the cost of the silk here sued for, our finding 7 shows that only 280 bales, or less than 4 percent of it, had been bought during the last week of the free market, when the price went above $3.08. Considering then the nature of the events which caused the extraordinary rise in the price of silk in the few days preceding the closing of the market, the normal prices of silk as shown by the tables cited, and the cost of the silk to the owners, we conclude, *as this court did* in *Walker et al. v. United States*, 64 F. Supp. 135, 105 Ct. Cl. 553, and that the $3.08 which the plaintiffs were paid was not less than the fair value of their silk." 78 F. Supp. 800, 805 (Italics supplied).

In the *Walker* case referred to above the court said that in arriving at $3.08 a pound as just compensation it did so in the exercise of its judicial functions independently of any conclusion arrived at by the Price Administrator. 105 Ct. Cls. 553, 580.

of its own and it would not have referred to the *Walker* case as it did. Whatever may be the merits of petitioners' attack on the validity of the ceiling price fixed by the Office of Price Administration and Civilian Supply in the summer of 1941, this case does not present it.

2. The other contentions urged by petitioners are also lacking in merit. Petitioners contend (a) that the court should have found a "taking" on July 26, 1941, on the theory that the freezing order M-22 issued on that day was the first step in a plan by the United States to acquire all outstanding raw silk at a price it would subsequently determine itself and (b) that the figure of $3.08 a pound which the court below fixed as just compensation is inadequate and that the figure of $3.57 per pound should have been adopted. These contentions are wholly factual in nature and in each instance the holding of the Court of Claims is based upon findings of fact supported by substantial evidence.

(a) Petitioners contend that their silk was taken on July 26, 1941 by the issuance of General Preference Order M-22 (Appendix, pp. 16-18) by the Office of Production Management. That order prohibited the delivery or acceptance of delivery of raw silk without the specific authorization of the Director of Priorities of the Office of Production Management. Petitioners contend that the taking occurred at this time because the issuance of this order was the first step in a government "plan" to

acquire raw silk at a price it would subsequently determine itself.

The above order of July 26, 1941 was issued pursuant to the Act of May 31, 1941 (55 Stat. 236) which amended the Act of June 28, 1940 (54 Stat. 676). In the absence of the "plan" alleged by petitioners, it is clear that the issuance of the above "freezing" order did not amount to a taking. Acts done in the proper exercise of governmental powers do not amount to a "taking" simply because injury is suffered, but only if there is an actual taking of the property or a direct invasion of it. *Transportation Co.* v. *Chicago,* 99 U. S. 635, 642; *Gibson* v. *United States,* 166 U. S. 269, 275-276. It follows of course that the same rule applies to acts done in the proper exercise of war powers. *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146, 156-157; *Atwater & Co.* v. *United States,* 275 U. S. 188, 190-191; *Omnia Co.* v. *United States,* 261 U. S. 502, 508-509.[4] In the instant case, the "freezing" order of July 26, 1941, did not involve either an actual taking or a direct invasion sufficient to constitute a "taking". Cf. *St. Regis Paper Co.* v. *United States,* 76 F. Supp. 831 (Ct. Cls.), certiorari

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[4] There may be of course a "taking" where there is a deprivation of the former owner by destruction of the property, the accretion of a right or an interest to the sovereign in such a case being unnecessary. In the case of a freezing of the possession of property, such as is involved here, the effects are not "so complete as to deprive the owner of all or most of his interest in the subject matter." *United States* v. *General Motors Corp.,* 323 U. S. 373, 378.

denied, October 11, 1948; *Henderson* v. *Bryan,* 46 F. Supp. 682, 685 (S.D.Cal.).

It is equally clear that there was no "plan" such as petitioners allege. Petitioners contend that the plan is shown from the relationship of the two administrative departments (Office of Production Management and the Office of Price Administration and Civilian Supply) which acted with respect to raw silk and the simultaneous and successive orders issued by them. (Pet. 63). There is no evidence of any "well defined" plan and the only pertinent finding fails to show that the two departments had any such "plan".[5] Petitioners say it can be assumed that the two departments coordinated the policy to be followed. We see no basis for such an assumption in the light of testimony given to exactly the opposite effect (R. 217, 221, 222). Certainly the "simultaneous and successive" orders issued by the departments do not prove any such "plan". Contrary to petitioners' contention, not only do the findings and evidence fail to disclose the existence of any such "plan" but the Court of Claims in its opinion stated that, "The plaintiffs have not proved such a preconceived plan." 78

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[5] "* * * A joint committee of OPACS and OPM officials existed at that time for the purpose of coordinating policies with respect to various commodities including silk, but the evidence does not satisfactorily show what discussion, if any, took place between those agencies on or prior to July 26, 1941, with respect to the acquisition of silk" (Finding 10, R. 52-53).

F. Supp. 800, 803.[6] Probably what took place was the tentative step-by-step formulation of policy with respect to silk supplies and prices, in the light of a highly fluid foreign situation. It would be unrealistic to assume that under those conditions the officials responsible for the issuance of General Preference Order M-22 in July had any other purpose at that time than to prevent use of existing silk supplies for non-essential purposes.

(b) The amount of $3.08 a pound found by the lower court to be just compensation is supported by the findings and the evidence. Petitioners first objection is that the findings and evidence do not bear out the existence of an extraordinary market fluctuation from July 21 to July 25, 1941, so as to justify the court's disregard of the prices existing during this period in arriving at a determination of just compensation. A comparison of the prices in Finding 5 (R. 45-47) and a study of these prices in graphic form (Def's. Exhs. 15, 17, cf. R. 255), clearly indicates the extraordinary nature of the July 21 to July 25, 1941, price fluctuation. Petitioners rely heavily on the testimony of one Paolina Gerli as evidencing the lack of any extraordinary fluctuation (Pet. 41-42). The probative value of that testimony is more than offset by Mr.

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[6] There can be no doubt that the two dissenting judges who disagreed as to the amount of compensation, agreed as to the absence of any plan since they concurred with the majority that the date of taking was October 16, 1941. 78 F. Supp. 800, 806.

Gerli's contrary statement in a letter which was written by him to the Defense Supplies Corporation on July 23, 1941, the very mid-point of this period. (R. 226).

Petitioners' next objection is that the Court of Claims should not have considered, in its determination of fair compensation, market prices previous to the time of taking. The court in its opinion clearly indicated the necessity of using such prices because of the lack of a market at the time of taking, October 16, 1941.[7] Petitioners themselves urge consideration of previous prices in contending that fair compensation was the price paid in the market on July 25, 1941. As stated by the court, these prices were so extraordinary as to be no measure of the fair value of petitioners' silk as of the time it was taken. 78 F. Supp. 800, 805. Obviously the court was correct in going further back and studying normal prices.

Petitioners' third objection is that the court in its determination considered the cost of the silk to petitioners.[8] We do not agree that cost can never be a criterion in the determination of just compensation for property "taken" by the Government. In such a situation as this where there was no free

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[7] "There being no market, in the usual sense, for silk at the time of taking, the court must make its decision as to just compensation out of such materials as are at hand." 78 F. Supp. 800, 805.

[8] Finding 7, R. 49, shows that less than 4% of the silk was purchased at prices above $3.08 a pound. The court considered this in its determination. 78 F. Supp. 800, 805.

and open market at the time of taking, and where the materials for ascertaining compensation were scant, we believe that it was proper for the court to consider, along with previous market prices, the cost of silk to petitioners. The rule that cost may not be considered applies only when there is a free and open market prevailing at the time the property is taken. *United States* v. *New River Collieries,* 262 U. S. 341, 344; *United States* v. *Felin and Co.,* 334 U. S. 624, 643, 652.[9]

CONCLUSION

The issues presented by the petition were correctly decided by the Court of Claims, and there exists no conflict. It is therefore respectfully submitted that the petition should be denied.

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MARCH 1949.

[9] In the *New River Collieries* case this Court said that the lower court was correct in rejecting cost as an element of consideration because: "it was shown beyond controversy that there were market prices prevailing when and where the coal was taken." 262 U. S. 341, 344.

In the *Felin* case Mr. Justice Reed speaking for three members of this Court in a concurring opinion stated that: "If there is no real market value, cost may be an element in the determination of value." 334 U. S. 624, 643. And Mr. Justice Jackson speaking for two members in the dissenting opinion stated that cost was a proper element for consideration where there was no true market price. 334 U. S. 624, 652.

APPENDIX

1. The Act of May 31, 1941 (55 Stat. 236) which amended the Act of June 28, 1940 (54 Stat. 676) provides:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 2 of the Act approved June 28, 1940 (Public, Numbered 671, Seventy-sixth Congress), as amended, is amended by inserting "(1)" after "SEC. 2. (a)" and by adding at the end of subsection (a) thereof the following:
>
> "(2) Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—
>
> "(A) contracts or orders for the Government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled 'An Act to promote the defense of the United States';
>
> "(B) contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States; and
>
> "(C) subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this section.
>
> Deliveries under any contract or order specified in this section may be assigned priority

over deliveries under any other contract or order. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material for defense or for private account or for export, the President may allocate such material in such manner and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense. The President shall be entitled to obtain such information from, require such reports by, and make such inspection of the premises of, any person, firm, or corporation as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this section. No person, firm, or corporation shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from his compliance with any rule, regulation, or order issued under this section. The President may exercise any power, authority, or discretion conferred on him by this section, through such department, agency, or officer of the Government as he may direct and in conformity with any rules and regulations which he may prescribe."

2. The following Order was issued by the Office of Production Management on July 26, 1941: (6 F. R. 3731)

General Preference Order M-22 To Conserve the Supply and Direct the Distribution of Silk.

Whereas, the uncertainty of future shipments of Raw Silk from abroad and national defense requirements for Silk have created a shortage thereof and it is necessary, in the public interest and to promote the defense of the United States, to conserve the supply and direct the distribution of Silk;

Now, therefore, it is hereby ordered, That:

§ 963.1 *General preference order*—(a) *Definitions.* For the purposes of this Order:

"Person" means and includes any individual, partnership, association, corporation or other form of enterprise.

(b) *Restrictions on deliveries.* No Person shall hereafter make delivery, and no Person shall accept delivery, of Raw Silk unless specifically authorized by the Director of Priorities: *Provided, however,* That deliveries of imported Raw Silk may be made without restriction to any Person importing the same, either directly or through an agent.

(c) *Restrictions on processing.* No Person shall during the week commencing Monday, July 28, 1941, or during any succeeding week, knit, weave or otherwise process thrown Silk in excess of that knit, woven or otherwise processed by him during the week ending July 26, 1941, unless specifically authorized by the Director of Priorities.

(d) *Appeal.* Any Person who considers that compliance with this Order will work an undue hardship upon him may appeal by tele-

graph or mail to the Director of Priorities, Office of Production Management, Washington, D. C., setting forth the pertinent facts and the reason such Person believes that he is entitled to relief.

* * * * *

E. R. STETTINIUS, JR.

3. The following Amendment to General Preference Order M-22 was issued by the Office of Production Management on August 2, 1941: (6 F. R. 3892)

Amendment to General Preference Order No. M-22 To Conserve the Supply and Direct the Distribution of Silk.

(a) § 963.1 *General Preference Order No. M-22* is hereby amended as follows:

(1) Paragraph (c) of said section is hereby amended to read as follows:

(c) *Restrictions on processing.* (1) No Person shall during the week commencing Monday, July 28, 1941, or during any succeeding week, knit, weave, or otherwise process thrown Silk in excess of that knit, woven, or otherwise processed by him during the week ending July 26, 1941, unless specifically authorized by the Director of Priorities.

(2) No Person shall after twelve o'clock midnight on Saturday, August 2, 1941, throw, spin or otherwise process raw Silk, unless specifically authorized by the Director of Priorities.

* * * * *

E. R. STETTINIUS, JR.

4. The following Amendment to General Preference Order M-22 was issued by the Office of Production Management on August 12, 1941: (6 F. R. 4046)

Amendment to General Preference Order No. M-22 To Conserve the Supply and Direct the Distribution of Silk.

(a) Section 963.1 (General Preference Order No. M-22) is hereby further amended as follows:

(1) Paragraph (b) of said section is hereby amended to read as follows:

(b) *Restrictions on deliveries.* No Person shall hereafter make delivery, and no Person shall accept delivery, of Raw Silk unless specifically authorized by the Director of Priorities: *Provided, however,* That deliveries of imported Raw Silk may be made without restriction to any Person importing the same, either directly or through an agent, *And provided further,* That deliveries of Raw Silk may be made without restriction by or to Defense Supplies Corporation, or pursuant to its instructions.

* * * * *

E. R. STETTINIUS, JR.

5. The following Amendment to General Preference Order M-22 was issued by the Office of Production Management on October 16, 1941 (6 F. R. 5290)

Amendment to General Preference Order No. M-22 to Conserve the Supply and Direct the Distribution of Silk.

Whereas, the uncertainty of future shipments of raw silk from abroad and national defense requirements for silk have created a shortage thereof and it is necessary in the public interest and to promote the defense of the United States to conserve the supply and to allocate the said supply in the manner and to the extent in this Order provided;

Now, therefore, it is hereby ordered, That: General Preference Order No. M-22 is hereby amended to read as follows:

§ 963.1 *General Preference Order No. M-22* —(a) *Applicability of Priorities Regulation No. 1.* All of the provisions and definitions of Priorities Regulation No. 1, issued by the Director of Priorities on August 27, 1941, shall be deemed a part of this Order, except in so far as they are inconsistent herewith.

(b) *Required and permitted deliveries.* (1) The following orders are hereby assigned a preference rating of A-10, and acceptance thereof is required:

(i) Any contract or order for silk cloth, shroud lines, tape or thread for either life, materiel, or flare parachutes placed by the War Department, the Navy Department, or the Department of Commerce for such parachutes to be delivered to or for the account of the Army, Navy or Weather Bureau of the United States.

(ii) Any contract or order for silk in any form required by the person placing the same to fulfill his contracts or orders on hand, pro-

vided such silk is to be physically incorporated in material to be delivered under contracts or orders included under (i) above.

(iii) Any contract or order for raw silk placed by the Defense Supplies Corporation.

(2) Deliveries of imported raw silk may be made to any person importing the same, either directly or through an agent.

(c) *Restrictions on deliveries.* Notwithstanding anything in Priorities Regulation No. 1 to the contrary, no person shall hereafter sell or otherwise transfer title to, or make any deliveries, and no person shall purchase or accept delivery of Raw Silk except as provided in paragraph (b) hereof, unless specifically authorized by the Director of Priorities.

(d) *Restrictions on throwing, weaving and other processing.* (1) No person shall, during any week, knit, weave or otherwise process thrown silk in excess of the amount knit, woven or otherwise processed by him during the week ending July 26, 1941, unless specifically authorized by the Director of Priorities.

(2) No person shall throw, spin or otherwise process Raw Silk except as otherwise provided herein or unless specifically authorized by the Director of Priorities.

(e) *Reports.* Each person delivering or accepting delivery of Raw Silk in accordance with paragraph (b) hereof, or as specifically authorized by the Director of Priorities, shall, on or before the close of the next business day

following such delivery or acceptance notify the Textile Section Research Department, Office of Production Management, in writing, of the amount, the bale numbers, origin, denier size and color of any bales of Raw Silk so delivered or accepted, the names and addresses of the persons delivering and accepting delivery, and the identifying number or numbers of the War, Navy, or Commerce Department contracts in material delivered under which such Raw Silk is to be physically incorporated.

(f) *Appeal.* Any person who considers that compliance with this Order would work an undue hardship upon him may appeal by telegraph or mail to the Director of Priorities, Office of Production Management, Washington, D. C., setting forth the pertinent facts and the reason such person believes that he is entitled to relief.

* * * * *

DONALD M. NELSON,
Director of Priorities.

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